

REMARKS

Claims 1 through 20 are now pending in this application. Applicant has amended claims 3, 4, 5, and 17.

Applicant's attorney expresses his appreciation and thanks for the courtesies extended by the Examiner and her supervisor during the interview on October 24, 2001. The Examiner, as set forth in the October 24, 2001 Interview Summary Record, has indicated that patentability may be found, pending further search of the art, if claims 3, 4, and 5 are changed to independent claims to avoid conflict with claim 1, if the term "vehicle" in claim 17 is changed to "form," and upon clarification of §112 issues.

Claims 3, 4, and 5 have been amended to independent claim form. Claim 17 has been amended as a matter of form to clarify the claimed invention. Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made".

It is respectfully submitted that the above amendments to claims 3, 4, 5, and 17 are neither narrowing, nor made for substantial reasons related to patentability as defined by the Court of Appeals for the Federal Circuit (CAFC) in Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., 95-1066 (Fed. Cir. 2000). Therefore, it is submitted that the amendments to the claims do not create prosecution history estoppel and, as such, the doctrine of equivalents is available for all of the elements of the claims.

The Office Action has rejected claims 1 to 20 under 25 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Office Action sets forth that claims 1, 2, 6, 12, 13, and 14 are rejected because the term "substantially" renders the claim vague and indefinite, and because the term refers to a relative degree and the scope of the claim is not clear.

The October 24, 2001 Interview Summary clearly sets forth that the Examiner's §112 rejections on "substantially" are to be withdrawn.

The Office Action has rejected claims 2 to 6 and 8 to 10 because their reference to the limitation on particle size distribution recited in claim 1 renders the claims confusing. The Office Action sets forth that claims 2 to 6 and 8 to 10 are inconsistent with the requirement of claim 1 for "a particle size distribution of about 24 microns," [in that they all require particle size distribution significantly less than "about 24 microns."]

The October 24, 2001 Interview Summary sets forth that claims 3 to 5 should be rewritten as independent claims to avoid conflict with claim 1. In response, applicant has so amended claims 3, 4 and 5.

The Office Action has rejected claim 16 because the term "secondary component" renders the claim vague, and because claim 1, which is the base claim for claim 16, already discloses three

components. As noted in claim 16, "secondary component" is introduced for the first time in claim 16. Clearly, this rejection should be withdrawn.

The October 24, 2001 Interview Summary sets forth that the term "vehicle" in claim 17 be changed to "form". In response, applicant has amended claim 17.

The Office Action has rejected claims 1 to 20 under 35 U.S.C. §103(a) as obvious over Rouquet et al. (U.S. Patent No. 6,258,345 B1) in view of Ishida et al. (JP 2000619342 A2) and its abstract. The Office Action sets forth that given the general teaching of the spherical polymeric particles in Rouquet et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to have looked to the prior art, such as Ishida et al., for specific teaching of the particle size distribution because of the expectation to have successfully produced cosmetic composition with long lasting and wrinkle-masking effect.

The October 24, 2001 Interview Summary sets forth that Rouquet et al. does not meet the particle size limitation, as the reference requires particle size less than 10 microns. Further, the Interview Summary states that Ishida et al. lacks elastomer particles, but the claims do not require the particle size distribution of elastomer. Consequently, the §103 rejection is overcome. Applicant respectfully submits that the Rouquet et al. and Ishida et al. patents neither describe nor suggest the claims of the present invention. As stated in the Interview Summary, the claims of the present invention overall appear to be allowable over the prior art of record, upon clarification of §112 issues, pending further search.

Serial No. 09/23,508

Art Unit 1619

In view of the foregoing, applicant respectfully submits that the claims of the present invention are allowable, and requests that the rejections be reconsidered and withdrawn, and that the claims of this application be given favorable consideration and passage to allowance.

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Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

3. (Amended) [The] A cosmetic composition comprising: [of claim 1, wherein the]

a crosslinked silicone elastomer;

a plurality of substantially spherical particles having a particle size distribution [is] of about 15 microns; and

a vehicle.

4. (Amended) [The] A cosmetic composition comprising: [of claim 1, wherein the]

a crosslinked silicone elastomer;

a plurality of substantially spherical particles having a particle size distribution [is] of about 7 microns; and

a vehicle.

5. (Amended) [The] A cosmetic composition comprising: [of claim 1, wherein the]

a crosslinked silicone elastomer;

a plurality of substantially spherical particles having a particle size distribution [is] of about 2 microns; and

a vehicle.

17. (Amended) The cosmetic composition of claim 1, wherein the vehicle is in a form [is] selected from the group consisting of a solid, solution, essence, serum, pencil, spray, lotion, emulsion, cream, micro-emulsion, gel, ointment, patch, stick and tape.